

CHANGE WITHOUT REGULATORY EFFECT UNDER CALIFORNIA CODE OF
REGULATIONS, TITLE 1, SECTION 100

Change to the Manual of Policies and Procedures:
Deletion of Division 30, Section 30-764.32

Justification for Changes Without Regulatory Effect:

This is an editorial package to be filed pursuant to Title 1, Section 100 of the California Code of Regulations (CCR). For the reasons set forth below, the California Department of Social Services (CDSS) has determined that the repeal of Manual of Policies and Procedures (MPP) §30-764.32 (formerly §30-464.32) meets the standard of CCR, Title 1, Section 100 because the deletion does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the MPP.

1. MPP §30-764.32 Was Repealed in 1982

The current MPP §30-764.32 was originally adopted as MPP §30-464.32 in 1980 and repealed in 1982 in accordance with the requirements of the Administrative Procedures Act (APA). However, due to a clerical oversight in 1982, the repealed text of MPP §30-464.32 failed to be stricken and subsequently removed from the MPP and currently remains in the MPP as §30-764.32. Although the text of the regulation remains in the MPP, the regulation has never been implemented or enforced by CDSS in thirty-three (33) years, based on the reasons that supported its repeal in 1982.

Historical Background:

In 1978, the Legislature enacted Assembly Bill 3028, which added §12302.2 to the Welfare and Institutions Code (WIC) (See Exhibit A). WIC §12302.2 required CDSS to perform all rights, duties and obligations for direct payment to In-Home Supportive Services (IHSS) providers on behalf of IHSS recipients for purposes of unemployment compensation, unemployment compensation disability benefits, workers' compensation, federal and state income tax and federal old-age survivors and disability insurance benefits.

Pursuant to WIC §12302.2, CDSS adopted emergency regulations effective April 1, 1980 (See Exhibit B) to: 1) establish a payrolling system; 2) describe the responsibilities of the counties and recipients under the new payrolling system; 3) describe the role of the providers; 4) *specify that existing labor standards are applicable to provider compensation and work scheduling*; 5) provide new terminology for the payrolling system; and 6) renumber existing regulations in Division 30. (See Attachment B, page 3. Emphasis added.)

One of the emergency regulations adopted was MPP §30-464, including subsections §30-464.1, §30-464.2, §30-464.3 and §30-464.4, to implement #4 noted above (See Exhibit B, pages 10-18). In April 1982, as required by the APA for emergency regulations, CDSS adopted 'final regulations'. In the final regulation package, MPP §30-464.3 and its

subsections, including MPP §30-464.32, were entirely repealed (See Exhibit C, pages 5-6 and page 20). The 1982 regulatory action to adopt the 'final regulations' specifically states "[repeal old and adopt new Section 30-464.3..." which necessarily included the repeal of the subsections including MPP §30-464.32 (See Exhibit C, page 20). However, due to an inadvertent error, MPP §30-464.32 continued to be published despite having been repealed.

The clerical oversight of not deleting §30-464.32 appears to be due to the fact that Section MPP §30-464.3 appeared on two pages with subsections §§30-464.31, 30-464.311 and 30-464.312 appearing on the first page, and only subsection §30-464.32 appearing on the second page. Because MPP §30-464.32 was the only subsection of MPP §30-464.3 which appeared on the second page, it was inadvertently overlooked to be stricken and deleted (See Exhibit B, pages 16-17).

In support that MPP §30-464.32 was repealed and should now be deleted based on clerical oversight is the fact that the applicable "Reference" citations, federal and state laws labor standards (Title 8, California Administrative Code §11550 and 29 C.F.R. 552) to be implemented by the original version of §30-464.3 were deleted from the "Reference" citations for MPP §30-464.3 when the entire MPP §30-464.3 and subsections including MPP §30-464.32 were repealed (See Exhibit C, page 20).

Deleting an invalid regulation from publication in the MPP does not materially alter any requirement, right, responsibility, condition, prescription or other regulatory element of the MPP. Accordingly, the deletion of MPP §30-764.32 is appropriate for processing under CCR, Title 1, Section 100. Although this change does not fall squarely within the examples of a change without regulatory effect included in subsections (a)(1)-(6) of CCR, Title 1, Section 100, Section 100 clearly states that changes without regulatory effect "are not limited to" those examples.

2. MPP §30-764.32 Is Inconsistent With a Changed Statute

CDSS has further determined that the deletion of MPP §30-764.32 is appropriate for processing under CCR Title 1, Section 100(a)(6) because: 1) the current regulation is inconsistent with and superseded by a changed statute; and 2) the CDSS has no discretion to adopt a change which differs in substance from the one chosen.

The deletion of MPP §30-764.32 is necessary to comply with Senate Bill 855 (Chapter 29, Statutes of 2014) and Senate Bill 873 (Chapter 685, Statutes of 2014) (See Exhibit D). These bills added and amended WIC §12300.4 which governs the payment of overtime, travel time and wait time to IHSS providers. While §30-764.32 requires overtime compensation for hours worked in excess of 40 hours during a work week, in opposition, WIC §12300.4 restricts the payment of overtime wages based on the maximum number of hours that an IHSS provider is permitted to work within a workweek; the maximum number of hours may not exceed 66 hours per workweek.

As permitted by subdivision (k) of the statute, to implement the provisions of WIC §12300.4, CDSS adopted All-County Letter 14-76, which was issued October 8, 2014 (See Exhibit E).